IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6962 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPIKA ARVINDKUMAR PANCHOLI

Versus

STATE OF GUJARAT THRO'CHIEF REGISTRAR AND

Appearance:

1. Special Civil Application No. 6962 of 2002

MR HRIDAY BUCH for Petitioner No. 1

MS. DARSHANA S PANDIT AGP for Respondent No. 1

MR DHIRENDRA MEHTA for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2002

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, petitioner challenges the action

of respondent No.2, that is, the Registrar of Births & Deaths Registration Department, Navsari Municipality, in not acceding to the request of the petitioner in registering her name in the Birth Certificate by misinterpreting the provisions of the Registration of Births and Deaths Act, 1969 ('the Act' for short) and the Gujarat Registration of Births and Deaths (Amendment) Rules, 1985 ('the Rules' for short) and, therefore, prayed to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction by directing the respondent - authorities to register the name of the petitioner in the Births Register in Column No.1 of the Birth Certificate at Annexure -C to the petition by declaring the action and interpretation of the respondent - authorities to be illegal, arbitrary and unconstitutional.

2. The facts leading to the filing of the present petition briefly stated are as under:

2.1. It is the case of the petitioner that she is the daughter of Arvindkumar J Pancholi and Minaxiben Arvindkumar Pancholi and was born on March 5, 1974 at Navsari as her father was working as Medical Officer at Navsari under the Health Department of the State of Gujarat. Immediately on the next day, her father registered her birth before respondent No.2 as prescribed under various provisions of the Act and the Rules and her birth was registered at Registration No. 495 on March 6, 1974. According to the Hindu Ritual, as her name was not decided, her name could not be entered into at the time of registering her birth and the certificate as prescribed under section 17 of the Act has been issued without her name.

2.2. It is stated that in the said certificate it is mentioned that the name of the child is to be registered within one year from the date of the registration of the birth or else late fee of Rs.2/- will have to be paid for such late registration and nothing further is mentioned in the Birth certificate. It is further stated that the name of the petitioner could not be registered as the father of the petitioner had resigned from the services due to some personal reasons and had shifted to Mehsana. However, because of the fact that no time limit has been mentioned in the Birth Certificate, the name of the petitioner could not be registered due to oversight of the father of the petitioner.

2.3. The petitioner states that thereafter she was admitted in the school at Mehsana on the basis of the

aforesaid Birth Certificate and thereafter she studied and completed her graduation in Mehsana. It is the case of the petitioner that thereafter the father of the petitioner shifted to Gandhinagar in the year 1995 and since then the petitioner is residing at Gandhinagar at the address mentioned in the cause title. It is further stated that the name of the petitioner is also mentioned in the ration card issued by the Civil Supplies Department of the State of Gujarat.

2.4. It is further stated that recently the petitioner is engaged with one Hitesh Ratilal Trivedi who is a citizen of United States of America. It is further stated that as the petitioner's fiance is a citizen of United States, naturally the petitioner shall have to settle down in USA. Therefore the petitioner has applied for passport in the Passport Department under the External Affairs Ministry of the Union of India and while applying for the passport, the birth certificate at Annexure C to the petition was submitted alongwith the affidavit of the parents of the petitioner and after detailed inquiry, the petitioner is given the passport by the concerned department.

2.5. The petitioner states that in the meantime it was decided by the family members of the petitioner as wall as her fiance that the marriage of the petitioner with her fiance is to be solemnized in US and therefore the fiance of the petitioner applied for Fiance's K-1 Visa before the concerned authority in the US.

2.6. It is further stated that an intending immigrant on the basis of Fiance's Visa must meet with documentary requirement such as valid Passport, the Medical Examination report, evidence of valid relationship with the fiance, Birth certificate, etc.

2.7. It is further case of the petitioner that as a Birth certificate is an utmost necessary document which is required to be annexed while applying for such visa, the petitioner realised the mistake in not getting her name registered in the Birth Certificate and therefore father of the petitioner immediately approached respondent No.2 and requested him to enter the name "Dipika" of the petitioner in the Birth certificate alongwith an affidavit of the father of the petitioner alongwith the reasons for not getting her name registered at the initial stage. However, the said application has been rejected by respondent No.2 vide letter dated July 22, 2002. Therefore, the petitioner is constrained to approach this Court by filing the present petition under

Article 226 of the Constitution.

3. The petition is contested by respondent No.1 State of Gujarat, by filing affidavit in reply which is sworn by A.S. Bhagat, Deputy Secretary , Health & Family Welfare Department, Sachivalaya, Gandhinagar, inter alia, denying all the averments made in the petition. It is stated that the petition does not deserve to be entertained as it is not maintainable. It is stated that the authority has taken the action as per the provisions of Section 14 of the Act read with Rule 11 of the Rules. It is stated that the registration of the birth event should be done within 14 days of time and in the present case the petitioner did it accordingly. However, the name of the child can be entered into within 12 months time from the date of registration without paying any fees while it can be entered into after 12 months but within a period of 15 years by paying late fee of Rs.2/It is therefore stated that as per the provisions of Rule 11 of the Rules the name can be entered into within a period of 15 years but in the present case the petitioner has approached the authority after 15 years to get her name entered into the Birth certificate and therefore the petition deserves to be dismissed. It is stated that all the Registrars of Births and Deaths in the State of Gujarat have been informed by the office of the Commissioner, Health Medical & Medical Services and Medical Department vide letter dated December 31, 1999 regarding the time limit for entering the name of the child within 15 years from the date of registration of birth, a copy of which is annexed as Annexure -I to the affidavit in reply. Under the circumstances, considering the provisions of the Act as well as the Rules, the petitioner is not entitled to get any relief as prayed for in the petition and hence the petition deserves to be dismissed and therefore it is prayed to dismiss the petition.

4. No reply affidavit has been filed on behalf of respondent No.2.

5. Mr. Hriday Buch, learned advocate for the petitioner submitted that the Act is enacted to provide for the regulation of registration of Births and Deaths of the matters connected therewith and the main object of the enactment is to provide for proper registration machinery and to unify the existing legal and administrative provisions. Therefore, the purpose for which the Act has been enacted is totally different to which the respondent authorities are trying to effectuate. He further submitted that such punitive

interpretation cannot be given to the provisions of the Act and therefore urged that the action on the part of the respondent authorities is required to be declared illegal and arbitrary and respondents are required to be directed to register the name of the petitioner in the birth certificate. It is also emphasized by the learned advocate that the scheme of the Act even provides for a delayed registration of the Births and Deaths and the registrar is also empowered to correct or cancel the entry in the register of the Births and Deaths. It is pertinent to note that no time limit is prescribed in this regard under the Rules. Such an interpretation of Rule 11 given by the respondent authorities is wholly baseless and against the scheme of the Act and therefore prayed to issue appropriate writ, order or direction to respondent authorities.

6. In counter submission, Ms. Darshana Pandit, learned AGP contended that since there is no provision either under the Act or Rules to enter the name of the child in the register after a period of 15 years, the order passed by respondent No.2, the Registrar, Births and Deaths Registration Department, Navsari Municipality dated 22.7.2002 cannot be interfered with in a petition filed under Article 227 of the Constitution and therefore this petition deserves to be rejected.

7. I have considered the submissions made by the learned advocates appearing of the parties. I have perused the averments made in the memo of the petition, grounds set out therein, affidavit in reply filed on behalf of respondent No.1, provisions of the Act as well as the Rules and judgments cited at the bar by Mr. Hriday Buch, learned advocate for the petitioner.

8. Provisions of Section 14 of the Act postulate that the parent or guardian of a child whose birth is registered without a name, shall within the prescribed period give information regarding the name of the child either orally or in writing to the Registrar, the Registrar shall enter such name in the register and initial and date the entry.

9. So far as the prescribed period is concerned, there is a provision in rule 11 of the Rules. The said rule 11 envisages time limit within which the name of the child can be entered into the register. Rule 11 of the Rules reads thus:

"11. Period for the purpose of Section - 14:

(1) Where the birth of any child had been

registered without a name, the parent or guardian of such child shall, within 12 months from the date of registration of the birth of child, give information regarding the name of the child to the Registrar either orally or in writing.

Provided that if the information is given after the aforesaid period of 12 months but within a period of 15 years, which shall be reckoned:

(i) In case where the registration had been made prior to the date of commencement of the Registration of Births and Deaths (Amendment) Rules, 1985 from such date; or

(ii) In case where the registration is made after the date of commencement of the Registration of Births and Deaths (Amendment) Rules 1985 from the date of such registration,

subject to the provisions of sub-section (4) of Section 23, the Registrar shall-

(a) If the register is in his possession, forthwith enter the name in the register on payment of a late fee of rupees two.

(b) If the register is not in his possession and if the information is given orally, make a report giving necessary particulars, and if the information is given in writing, forward the same to the officer specified by the State Government in his behalf for making the necessary entry on payment of a late fee of rupees two.

(2) The parent or guardian, as the case may be, shall also present to the Registrar the copy of the extract given to him under Section 12 or a certified extract issued to him under Section 17 and on such registration the register shall make the necessary endorsement relating to the name of the child or take action as laid down in clause (b) of the provisions to sub-rule (1)".

10. In view of the aforesaid provisions of the Act as well as the Rules, there is no manner of doubt that the statute is silent with respect to entering name of a child after the period of 15 years in the Births and

Deaths Register. Therefore, in my opinion, the Act is silent about the contingency of entering the name of a child after 15 years of his/her birth.

11. Similar question arose before this Court in the case of Dr.Sukumar Mehta v. District Registrar, Births & Deaths, 34 (1) GLR 93, where the question was for effecting the change in the name of the child entered from "Suchi" to "Prachi". In the said case, this Court (Coram: S.D. Shah, J. as he then was) in para 4 of the judgment has observed as under:

> "4. In my opinion, the Act is silent about the contingency for subsequent correction of entry already made in Birth Register by correcting the name of the child at the instance of the parents. This is the case of unmindful legislative omission. This is classic case of casus omissi, i.e., circumstances concerning which an Act is silent. The question is how to deal with such contingencies? Should the Court leave the litigant in sheer helpless condition asking him to wait till the legislature curbs the defect by providing for the omission? Can the Court escape the responsibility of considering these unforeseen contingencies? However, I cannot ignore the modern tendency in Courts to take the view that if a case is entirely unprovided for by a Statute, either directly or indirectly, then it must remain nobody's child -a luckless orphan of the law (In re Leicester Permanent Building Society, 1942 Ch. 340). Same was the view of Devlin L.J. in Gladstone v. Bower, reported in 1960 (2) QB 384 when he observed "we cannot legislate for casus omiss". This tendency has given rise to inconvenient results. One option left for me is to express regrets for a statutory lacuna and to hope that it will be remedied by legislation and occasionally the hope is fulfilled, even if tardily. However, in my opinion, in this case, there is "impalpable line" of distinction which should enable the Court to come out of helplessness. In this case the caption of Sec.15 gives general indication to give power to correct the entry in the Birth Register. However, specific case of correction of name of the child already entered is omitted to be provided for. When the entry is erroneous, there is power to correct. When it is factually improperly made, there is power of correction. Question is when

entry is rightfully made, can it be corrected by resort to this power? In my opinion, once power to correct an entry already made in the Birth Register is conceded, it should legitimately take within its sweep the correction of entries rightfully made. It is the correction of the name of the child at the instance of the parents or wards. What possible objections can there be in reading such power in the authority if power to correct erroneous entry is conceded? The omission in the present case appears to be non-deliberate. In my opinion, omission being not deliberate and not supported by cogent reasons it would not be hazardous to read "implied will of the Legislators" in this provision so as to authorise the Registrar to correct the name of the child at the instance of the parents. I, therefore, hold that there is power in the Registrar to correct the entry already made by entertaining the application of the parents. In undertaking this exercise, I am reminded of what C.K.Allen said in his book "Law in the Making":

"Judges must and do carry out the express will of the legislature as faithfully as they can, but there is a wide margin in almost every statute where the Courts cannot be said to be following any will except their own. The statute then becomes, as to great part of it, not a direct "command" but simply part of the social and legal material which judges have to handle according to their customary process of judicial logic".

After having observed as aforesaid, the Court accepted the petition and thereby respondent authority was directed to entertain the application of the petitioner by accepting the same and to amend the entry in the Birth Register by amending the name of the female minor child of the petitioner from that of "SUCHI" to "PRACHI" and to initial such entry after correcting the name.

11. Similar question arose before this Court once again in the case of Vimal M. Patel v. State of Gujarat and another, 42 (3) GLR 2484. In the said case, this Court (Coram: Kundan Singh, J.), after referring to para 4 of the judgment in Dr. Sukumar's case (supra) has taken similar view which was taken in the earlier case and granted the relief prayed for in the petition.

12. So far as interpretation of statute is concerned,

Constitution Bench of the Supreme Court in the case of Carew & Co. v. Union of India, AIR 1975 SC 2260, has held as under:

> "If the language of a statute can be construed widely so as to salvage the remedial intendment, the court must adopt it. Minor definitional disability divorced from the realities of the industrial economics if stressed as the sole touchstone is sure to prove disastrous when special types of economic legislation like Monopolies and Restrictive Trade Practices Act having object is to inhibit concentration of economic power. Therefore, when two interpretations are feasible, that which advances the remedy and suppresses the evil as the legislature envisioned must find favour with the Court."

13. Similarly, in the case of Nasiruddin v. State Transport Appellate Tribunal, AIR 1976 SC 331, Constitution Bench of the Supreme Court has observed as under:

> "If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the result of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the court would not make any alteration."

14. Applying the principles laid down by the Supreme Court as well as this Court in the above referred to judgments to the facts of the present case, it is seen that in clear terms the Supreme Court has held that if we interpret the statute the result of it may be unjust, however, it does not entitle the court to refuse to give it effect and this is a classic case of casus omissi, that is, circumstances concerning which the Act is

silent. Therefore, the said power envisaged under rule 11 of the Rules can be legitimately extended to the power to enter the name of the child even after a period of 15 years on the application of the parent or guardian of the child. If there is a power with the Registrar to enter the name of the child after a period of 12 months and within 15 years from the date of registering the date of birth as per the proviso to rule 11 of the Rules on the request of the parents or guardian of the child, I read that there is also a power with the Registrar to enter the name of the child even after the period of 15 years. In my opinion, it is not the case of total absence of power in the Registrar and therefore the application of the petitioner should have been entertained by the registrar by entering the name of the child in the register. I am, therefore, of the opinion that this is a fit case where power ought to have been exercised by the Registrar under Section 14 of the Act read with rule 11 of the Rules by entertaining the application submitted by the father of the petitioner by adding name of the petitioner as requested in the application on payment of late fee of RS.2/- or any amount of late fee as may be prescribed by the authority.

15. Seen in he above context, the petition deserves to be allowed by granting the reliefs as prayed for therein.

16. For the foregoing reasons, the petition succeeds and accordingly it is allowed. respondent No.2 is directed to entertain the application submitted by the father of the petitioner by accepting the same afresh and to enter the name of the petitioner in the register on payment of late fee of RS.2/- or any amount of late fee as may be determined by the authority, within period of four weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.M. Kapadia, J.)

(karan)